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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 2 4 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a physical scientist/plant metallurgist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's determination that the petitioner has not established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Materials Science and Engineering from the University of Alabama at Birmingham. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. We include the term "prospective" to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, metallurgy, and that the proposed benefits of his work, improved and more efficient metallurgy, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted evidence that he is or was a member of the American Foundry Society (AFS), Material Advantage (The Student Program for Materials Science and Engineering), the Alabama Gamma Chapter of Alpha Sigma Mu and the University of Alabama at Birmingham Chapter of Phi Kappa Phi. Alpha Sigma Mu and Phi Kappa Phi appear to be honor societies based on academic rank and scholarship. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *Id.* at 219, n.6. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Id.* Regarding the petitioner's professional memberships, such memberships are one type of evidence that may be submitted to establish exceptional ability pursuant to section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *Id.* at 222. The record contains no evidence that the above professional memberships are indicative of an influence in the field of materials science as a whole.

The petitioner submitted an email from [redacted] requesting that the petitioner review a manuscript for the journal or suggest other potential reviewers in the event that the petitioner is unable to complete the review. On appeal, the petitioner submits additional requests that the petitioner review submitted manuscripts. Only one of the requests submitted on appeal predates the filing of the petition and that request is also from [redacted] The petitioner must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, we will not consider the review requests the petitioner received after that date. Regarding the remaining requests, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. The petitioner has not established that two requests to review manuscripts for the same journal are indicative of his influence on the field as a whole rather than his familiarity and experience with the subject matter of the articles.

The petitioner also submitted an email from [redacted] requesting that the petitioner serve as an external examiner for a Ph.D. thesis at that institution. It is apparent from this email that [redacted] had read the petitioner's articles and determined that the petitioner had the necessary knowledge to review a Ph.D. thesis. While notable, this request, by itself, is not evidence of the petitioner's influence in the field. [redacted] does not suggest that the Ph.D. student had applied the petitioner's work.

The petitioner submitted eight journal articles and four articles and one abstract published in conference proceedings. The petitioner also submitted the programs for three conferences. In response to the director's request for additional evidence, the petitioner submitted evidence regarding the prestige of the journals and conferences. Publication in prestigious journals and presentation at prestigious conferences demonstrates that these prestigious entities accepted the petitioner's work as promising and, thus, worthy of dissemination. At issue is how the petitioner's work was applied once disseminated.

The petitioner received first place [redacted] On appeal, the petitioner submits evidence that the society holds the contest in conjunction with the society's annual convention and that the contest "features the best work of metallographers and microstructural analysts from around the world." The materials further state:

> The primary goal of the contest is to advance the science of microstructural analysis by providing an opportunity for microstructural analysts to display their work and communicate significant scientific information.

The contest includes eight classes and a "Best in Show." Best in Show includes a $3,000 award and the first place winners in the individual classes receive $200. The society awards the prize money in the individual classes to the primary investigator (first author listed). While counsel notes that the petitioner is the first author for the majority of his publications, the petitioner is not the first author listed on this project. Regardless, recognition from professional organizations is one type of evidence that a petitioner may submit to demonstrate exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(F). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on recognition from professional organizations, while relevant, are not dispositive to the matter at hand. *NYSDOT*, 22 I&N Dec. at 222. More significant than recognition at the time of presentation is how double cemented carbide ultimately impacted the field upon dissemination.

[redacted], addresses this issue in a letter dated August 6, 2009. [redacted] explains that [redacted] worked with the University of Alabama at Birmingham on the double cemented carbide [redacted] project. [redacted] further confirms that the petitioner "was a critical member and correspondent with [redacted]" for the project. [redacted] explains that [redacted] has a "superior combination of high fracture resistance (toughness) and high wear resistance as compared with the conventional cemented carbide." [redacted] asserts that [redacted] as one of the top 100 innovations in 2009, seven years after the [redacted] recognized the petitioner's work on [redacted] The petitioner did not submit the actual *R&D Magazine* listing. As such, we cannot determine the exact innovation the magazine recognized. Significantly, while [redacted] asserts that [redacted] Technologies adopted [redacted] inserts "for a few years" the company eventually "phased out" [redacted] "because it was more expensive than the traditional carbides (sinter-HIP) and the traditional carbide properties improved to the point of matching the [redacted] carbide toughness." While [redacted] asserts that the petitioner's work on [redacted] was "very important to Smith Technologies" he does not

explain why *R&D Magazine* recognized DCC in 2009 after Smith Technologies was already phasing out DCC because of improvements to traditional cheaper carbides.

The Department of Labor's Occupational Outlook Handbook (OOH) states that materials engineers are involved in the development, processing, and testing of the materials used to create a range of products and are involved in selecting materials for new applications. *See* http://www.bls.gov/oco/ocos027.htm#nature, accessed February 17, 2011 and incorporated into the record of proceeding. Thus, the petitioner has not established that developing a metal with practical value for a few years to the company that commissioned the work demonstrates that the petitioner would benefit the national interest to a greater degree than other available and qualified U.S. material engineers.

Finally, the record contains no evidence that any of the petitioner's articles abou[redacted] or any other subject, have garnered any citations. In response to the director's request for additional evidence and again on appeal, counsel asserts that citations are not the only type of evidence that can establish influence in the field. Counsel notes that the petitioner submitted letters from independent references. Counsel then references unpublished AAO decisions. Counsel concludes that because the AAO sustained the appeal in other cases with little or no citation evidence and fewer independent letters than the petitioner has submitted in this matter, the petitioner has presented a stronger case than other appeals the AAO has sustained.

First, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Second, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r. 1989). Thus, at issue is not how many independent letters the petitioner has submitted but rather what those references say and whether the record supports those assertions. Moreover, as counsel asserts that the petitioner's impact is apparent in industry, independent letters from industry professionals confirming the petitioner's impact on independent companies would carry more weight than letters from independent academic institutions. Significantly, USCIS need not accept primarily conclusory assertions.[1] The record contains two letters from industry professionals, only one of which is from an independent reference. We will consider all the letters below.

[redacted] and [redacted] asserts that he recruited the petitioner to research roll cast aluminum in a Department of Energy funded project. Most, if not all research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. [redacted] explains that the petitioner "designed experiments to investigate the heat treatment effects on twin roll cast aluminum alloys." According to [redacted] the petitioner's research "provides practical solutions to the aluminum sheet manufacturing industry." [redacted] concludes that the petitioner gained an

[1] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

international reputation based on this work and that his contributions "were critical for both our scientific and industrial communities to be able to maintain a competitive edge in aluminum metallurgy."

As an example of the industry using the petitioner's work, [redacted] asserts that [redacted] is "employed widely for metal machining, construction, mining and petroleum exploration." The only company [redacted] identifies as using [redacted], however, is [redacted] which collaborated on the project. [redacted] asserts that [redacted] has had "remarkable success" using [redacted] in oil well drilling bits. As discussed above, however, [redacted] acknowledges using [redacted] but explains that [redacted] International has phased out [redacted] because traditional materials, which are cheaper, are now improved. The record contains no evidence of any other company using [redacted] to support [redacted] claim that [redacted] is currently "employed widely."

[redacted] at the University of Alabama at Birmingham and a member of the petitioner's Graduate Advisory Committee, also discusses the petitioner's work on [redacted], noting that Smith International used [redacted] for its tools. In addition, [redacted] asserts that the petitioner pursued techniques to make twin roll-cast aluminum alloys useable for applications that typically require more expensive traditional alloys. [redacted] states that the petitioner's work "led to innovative techniques that can dramatically improve the properties of this low-cost material and make it an option for numerous uses." [redacted] concludes that this "possibility can lead to a dramatic reduction in the production costs of aluminum alloys and improve manufacturing efficiency in the United States." While [redacted] asserts that the petitioner's work has "sparked much interest throughout the country," he does not provide a single example of a company applying or considering applying the petitioner's techniques.

[redacted] who has collaborated with the petitioner, asserts that the petitioner "validated the dispersoid model of Manganese solute behavior in aluminum alloys via Scanning Transmission Electron Microscopy, a cutting edge tool for material scientists." [redacted] further asserts that the petitioner "creatively carried out experiments to investigate the effect of heating rate on microstructural evolution of aluminum alloys during annealing." [redacted] speculates that the aluminum industry "can solve the problem of large grain size in twin roll cast aluminum alloys after recrystallization" based on the petitioner's work. [redacted] does not provide an example of a company that is applying or even investigating the petitioner's technique.

[redacted] explains that his laboratory hosted the petitioner while he conducted his aluminum alloy project. While [redacted] praises the petitioner's abilities and concludes that the petitioner's work has practical applications, he does not provide examples of the petitioner's impact in the field.

[redacted], explains the problems that have prevented twin roll casting of aluminum from full scale introduction in industry. While [redacted] asserts that the petitioner's research on this problem is a "breakthrough" and notes that the petitioner

published his research on this problem, [redacted] does not provide any examples of industry applying or investigating the petitioner's resolution.

[redacted] firms that the petitioner's article on pinning potential "has been indispensible" to one of [redacted] students who will be applying his results in industry upon graduation. While the petitioner's research clearly has practical applications, it can be argued that any Ph.D. thesis or published article, in order to be accepted or published, must offer new and useful information to the pool of knowledge. The fact that one other Ph.D. student at a different institution benefitted from the petitioner's research and will eventually work in industry does not demonstrate the petitioner's influence in the field as a whole.

[redacted]

2003. [redacted] asserts that the petitioner is "an experimentalist who has mastered a series of advanced experimental techniques." Special or unusual knowledge or training does not inherently meet the national interest threshold. *NYSDOT*, 22 I&N Dec. at 221. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.*

[redacted] describes the petitioner's work with twin roll cast aluminum discussed above. While [redacted] notes that the petitioner published this work, he fails to provide examples of industry applying or investigating the petitioner's techniques. [redacted] asserts that the petitioner's work on the effect of heating rate on recrystallization is a great advance in the field by "providing a way for industry to achieve optimum ductility in aluminum alloys and other metallic metals." [redacted] however, once again provides no examples of industry applying or investigating the petitioner's techniques.

[redacted] an associate professor at Purdue University who was at [redacted] while the petitioner performed his research there, asserts that his knowledge of the petitioner's work "comes solely from reading several of his publications." [redacted] discusses the petitioner's work on twin roll cast aluminum alloys and concludes that based on the petitioner's research, "the stereological means method has become the routine and most popularly used method." USCIS need not accept primarily conclusory assertions.[2] [redacted] provides no examples of specific companies using the stereological means method after reviewing the petitioner's work.

[redacted] an associate professor at Portland State University, explains that he met the petitioner at a training course after the petitioner filed the instant petition. [redacted] asserts that the petitioner's work in gating and risering of ferrous castings "is a platform for much ongoing work on simulation of hot tear, hot stress crack in Nickel based alloys" like that of [redacted] own research. [redacted] concludes that the petitioner's contributions "not only enrich our basic knowledge of metallurgy, but also greatly improve our country's competitiveness in manufacturing technology." [redacted] does not explicitly state that he is applying the petitioner's work or provide examples of other researchers that are doing so. Even if [redacted] is applying the petitioner's work, [redacted] does not affirm knowing of

[2] *1756, Inc.*, 745 F. Supp. at 15.

the petitioner or his work prior to the date of filing in this matter. The petitioner must establish his influence in the field as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

The petitioner submitted an independent letter from [redacted] for [redacted] discusses the petitioner's studies addressed above and explains how this work is novel, has practical applications, and has added to the general pool of knowledge in the field. [redacted] explains: "Unlike in the academia, adoption of one's work through actual use by the industry is the best evidence of the influence of his work." While we do not question this assertion, [redacted] only attests to the practical implications of the petitioner's work and provides no examples of industry's use of the petitioner's work. Regarding his own interest in the petitioner's work, [redacted] states only that he "would be eager to discuss [the petitioner's] innovative findings with him in further detail should the opportunity arise."

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of ability without providing specific examples of how the petitioner's practical innovations have influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[3] The independent letters do not suggest application of the petitioner's work at a level consistent with an influence on the field as a whole. The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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[3] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, as discussed above, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

Ultimately, the petitioner has demonstrated that his work at the time of publication or presentation, is viewed as having potential. Specifically, distinguished journals and conferences have accepted the petitioner's work and even formally recognized work in which he participated (but not as first author). The petitioner has not demonstrated, however, that his work has ultimately proven influential. The only company to have applied the petitioner's work collaborated in that work and utilized it for only a few years. In addition, a single Ph.D. student found the petitioner's work useful. While that student may go work in industry, it is mere speculation as to how the petitioner's influence will continue to support this student's work. In the aggregate, this evidence does not establish the petitioner's influence in the field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.